No. 1

Supreme Court, U.S.
FILED

IN THE 93184 0 MAY 18 1994

# Supreme Court of the United States

**October Term, 1993**

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ROBERT HUDSON,

*Petitioner,*

*against*

CARLETON and SUZANNE VARNEY and THE PEOPLE OF THE STATE OF NEW YORK,

*Respondents.*

PETITION FOR WRIT OF CERTIORARI FROM THE NEW YORK STATE COURT OF APPEALS

## PETITION FOR WRIT OF CERTIORARI

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## QUESTION PRESENTED

Under The Constitution Of The United States, Bill of Rights, Article 14. section 1., is petitioner entitled to an action to compel the determination to the way of necessity to his estate under Real Property Actions And Proceedings Law Article 15, or for the relief of five hundred and twenty five thousand dollars?

## PARTIES

All parties to the proceeding in the New York State Court Of Appeals were the petitioner Robert Hudson, and respondents Carleton and Suzanne Varney, and The People of the State of New York.

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IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

OCTOBER TERM,1993

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ROBERT HUDSON,

Petitioner,

-against-

CARLETON AND SUZANNE VARNEY, AND THE PEOPLE OF THE STATE OF NEW YORK,

Respondents,

- - - - - - - - - - - - - - - - - - - - - X

PETITION FOR WRIT OF CERTIORARI FROM THE NEW YORK STATE COURT OF APPEALS.

Petitioner, Robert Hudson, respectfully prays that a Writ of Certiorari issue to review the judgement of the New York State Court of Appeals that denied petitioners appurtenant way of necessity to his estate without due process or equal protection of the law

## OPINIONS BELOW

The order of the New York State Court of Appeals denying Motion For Leave To Appeal Reconsideration dated February 17, 1994 appears in Appendix A of this Petition. The Decision and Order of The Appellate Division Second Judicial Department dated September 17, 1993 appears as Appendix B. The Decision and Order of The Dutchess County Supreme Court dated July 18, 1991 appears as Appendix C.

## JURISDICTION

The New York State Court OF Appeals Order and Opinion in this matter was filed on December 21, 1993. A timely Motion For Reconsideration was submitted on January 13, 1994. The New York State Court Of Appeals denial of Motion for Leave to Appeal Reconsideration, for

petitioner's right to defend the way of necessity to his estate in fee simple was issued on February 7, 1994 and is set forth in appendix A. This Courts jurisdiction is involked under the Constitution Of The United States, Article Three sections one and two of the of the original Constitution and by the Bill of Rights, Fourteenth Amendment, section one.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitution of the United States, Bill of Rights, Article One section 2. is set forth in Appendix I

The Constitution of The State of New York, Article 1. Bill of Rights, section 14. is set forth in Appendix H

New York State Real Property Actions and Proceedings Law Article 15, is set forth as Appendix F

## STATEMENT OF CASE

On July 26, 1990 petitioner commenced an original bill in the New York State Supreme Court, Dutchess County, under New York State Real Property Actions and Proceedings Law Article 15 (Appendix F); an action to compel the determination of the way of necessity to petitioners estate in fee simple, or for relief from respondents for the sum of five hundred and twenty five thousand dollars.

The County of Dutchess sold to petitioner by Quit Claim Deed, twenty one acres of land together with the appurtenances and all the estate and right the County possessed in the premises on August 6, 1979 for seventeen hundred dollars.

Petitioners dwelling upon the land was built prior to there being a building permit requirement and is over a thousand

square feet in living area, color photographs were submitted to the trial court. Apiaries have been maintained and five acres of the land have been cleared for agricultural purposes. The property has been maintained in the 21 agricultural district.

The title search by Rombout Abstract CO. and Premier Abstract Co. and other maps and deeds each a jurat copy, were submitted to the trial court. These documents in petitioner's chain of title showed petitioner's and respondent's land were owned in the same parcel belonging to Sampson Sheldon Broughton, in the Second Nine Partners Patent lot #8 deed dated March 26,1745.

It has been shown to the court that without this way of necessity petitioner's estate is cut off from a road to the outer world.

The New York State Supreme Court

Appellate Division, Second Department (Appendix 7a,8a) and the Dutchess County Supreme Court Judge Jiudice,J.(Appendix 14a,15a) stated petitioners title was tried in a previous action. This was not true. Petitioner demanded trial by jury in writing and notorized to all courts relating to petitioner's trespass over the respondent Varneys property. Only once by Justice Tenore in the Town Court of Pine Plains was trial by jury granted. Justice Tenore placed petitioner in jail for five days for mental observation before trial for trespass against the respondent Varney property. Justice Tenores letter (Appendix 20a,21a) stated "No question of Defendant Hudsons title was ever determined by this court".

Under Real Property Actions And Proceedings Law Article 15, a prior judgment for trespass in wrongfully entering upon the respondent's premises

and cutting and removing of timber was not res judicata in subsequent action to determine title to realty.Brodhauf v Woodrow, 283 AD 760, 128 NYS2d 86.

Both petitioner and respondent Varney stated petitioner used the way of necessity in accordance with the laws of prescription 1. It was under hostile claim of right 2. It was actual 3. It was open and notorious 4. It was exclusive 5. It was continuous for ten years, in accordance with Real Property Actions and Proceedings Law Article 5 Adverse Possession (appendix G). The general rule for the period necessary to acquire an easement by prescription corresponds by analogy to that required for the acquisition of title to land by adverse possession. Plaza v Flack, 7 NJ 215, 81 A2d 137, 27 ALR2d 324-25 Am Jur 2d Easements and Licences section 60.

Under Real Property Actions and Proceedings Law Article 15 section 1519 where complaint and answer clearly indicated the essential point to be determined at trial was whether plaintiffs, by open notorious hostile and continuous use, acquired a right to a portion of defendants property neither the form of the action nor the prayer for relief could divert attention from the central fact that plaintiffs were asserting a claim to part of defendants land so that defendants were entitled to a jury trial. Chilwick v Camelo, 1976, 55 A.D.2d 782, 398 N.Y.S. 2d 485. The New York State Court of Appeals has said it is clear that when a defense is founded on adverse possession, color of title by deed or other semblance of right is required but it is equally clear that neither a deed nor any equivalent instrument is necessary when

the possession is indicated by an actual possession and any other evidence of adverse claim exists, Belotti v Bickhardt (1920) 22NY 296, 127 NE 239.

The respondent the people of the state of New York were made a party defendant to this action, for they placed a barrier across Old Hicks Hill Road, petitioners way of necessity. No other claim is made against the respondent the people of the state of New York. Real Property Actions and Proceedings Law section 1541. Article applies to corporations and to the people of the state of New York (Appendix 32a) Under this article the state could be made a party to action to compel the determination of claim to real property by deed holder claiming title, Hibiscus Harbor Inc, v Ebersold, 1967 53 Misc.2d 808, 280 N.Y.S.2d 44.

Under Ariicle 15 section 1501 ( Appendix 23a,24a) This article concerning actions to compel determination of claims to real property was enacted to establish "clearing house" for final determination of claims to real property.Hibiscus Harbor Inc. v Ebersold 1967, 53 Misc.2d 868, 280 280 N.Y.S.2d 44.

The prescriptive way existed over the respondent Varney property. The way of necessity existed over the state land.

Petitioners way of necessity rests not on a pre-existing use, but on the need for a way across the granted or reserved premises. Coyne v New York State Teachers Retirement System, (1939) 257 AD 1006, 13NYS2d 659 affd 283 NY 614, 28 NE2d 28.

Such a way is the presumption that when a party conveys property he conveys whatever is necessary for the beneficial use of that property and retains whatever is necessary for the beneficial use of the land he still possesses. Palmer v Palmer (1896)150 NY 139, 44 NE 966; Garvin v State (1921) 116 Misc 408,190 NYS 143.

A way of necessity is in fact acquired by grant not by prescription but as incident to the thing described and thus granted. Voorhees v Burchard, (1873) 55 NY 98.

A way of necessity arises where there is a conveyance of a part of a tract of land of such nature and extent that either the part conveyed or the part retained is shut off from a road to

the outer world by the land from which it is severed or by this land and the land of strangers. Blydon v United States 146 Ct Cl 746, 175 F Supp 891; Helberg v Coffin Sheep Co. 66 Wash 2d-404 P2d 770; Adams v Cale, 48 Nj Super 119, 137 A2d 92. A way of necessity is also said to be supported by the rule of public policy that lands should not be rendered unfit for occupancy or sucessful cultivation. Condry v Laurie, 184 Md 317, 41 A2d 66; Helberg v Coffin Sheep Co. 66 Wash 2d-404 P2d770.

The Supreme Court of the United States determined an implied way of necessity arises when the owner of a parcel of land conveys and grants part thereof to another, which leaves the remainder of the land without ingress

or egress, except over the land conveyed Wagner v Fairlamb, 151 Col 481, 379 P2d 165, cert den 375 US 879, 11 L ed 2d 110, 84 S Ct 149. Petitioner's deed granted the appurtenant way of necessity to his estate and the denial by the state of New York of petitioners way of necessity or its defense thereof, was to impair the obligation of contracts. The United States Supreme Court determined that the State could not impair the obligation of contracts. Dartmouth v Woodward 4 Wheaton US Supreme Ct,518 decided 1918.

Petitioner previously submitted Petition for Writ to the United States Supreme Court for trespass named herein U.S. Supreme Court case 92-5095.

All statutory conditions prescribed under Real Property Actions and Proceedings Law Article 15 section 1515

(Appendix 25a and 26a) were fulfilled in the trial court by petitioner and this record was submitted to all appeals courts.

Article 15 in respect of the distinction between an action at law and an action in equity, the action is a hybrid one; for, the action in form is an action at law triable by a jury whenever an issue of fact is presented by the pleadings; Nassau County v Hardie (Co Ct) 48 NYS2d 788, revd on other grounds 268 AD 1068, 53 NYS2d 41. 16 Carmody-Wait 2d section 101:2 Nature and Purpose of Real Property Actions And Proceedings Law Article 15.

This action is authorized for the purpose of securing possession and quieting title for it is to the interest of the community that real estate shall be readily transferable, and titles thereto

shall be reasonably marketable. Seneca Nation of Indians v Appleby, 196 NY 318, 89 NE 835.

Petitioner is a citizen of the United States.

## REASONS GRANTING WRIT

This petition presented an issue decided by this Court.

Under The Constitution of the State of New York, Article 1. Bill of Rights Section Fourteen, Common law and acts of the state legislatures (Appendix H) the Magna Carta signed by King John of England June 15, 1215 Sections 39 and 40 No free man shall be taken, or imprisoned, or dispossessed, or outlawed, or banished, or in any way destroyed, nor will we go upon him nor upon him send, except by legal judgment of his peers or by the law of the land,

To no one will we sell to no one will we deny, or delay right or justice.

Under The Constitution of the United States, Bill of Rights, Article Fourteen, Section 1, (Appendix I) All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State Wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny any person within its jurisdiction the equal protection of the laws.

## CONCLUSION

For the reasons set forth within this petition, a Writ of Certiorari should issue to review the judgment and opinion of the New York State Court of Appeals in this matter.

DATED: ,1994

Respectfully submitted

_____

Robert Hudson - Petitioner

APPENDIX—A
NEW YORK STATE COURT OF APPEALS, Denying Motion For Leave To Appeal Reconsideration

STATE OF NEW YORK
COURT OF APPEALS

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the Seventeeth day of February 1994

Present, HON. JUDITH S. KAYE, CHIEF Judge presiding

---

Mo. No. 106

Robert Hudson, Appellant,

v

Carleton Varney, et al., Respondents.

---

A motion having heretofore been made herein upon the part of the appellant for reconsideration of the Court's December 21, 1993 order of dismissal, papers having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied.

Judge Titone took no part.

Signed

Donald M. Sheraw
Clerk of the Court

APPENDIX—B NEW YORK STATE COURT OF APPEALS, Opinion and Order denying leave to appeal

STATE OF NEW YORK COURT OF APPEALS

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the twenty-first day of December 1993

PRESENT, HON. JUDITH S. KAYE, Chief Judge Presiding

Mo. No. 1371 SSD 94.

Robert Hudson,
Appellant,

v.

Carleton Varney, et al.,
Respondents

The appellant having filed notice of appeal in the above titled and due consideration having been thereon had, it is

Ordered, that the appeal be and the same hereby is dismissed without costs, by the Court sua sponte, upon the ground

that no substantial constitutional question is directly involved.

signed

Donald M. Sheraw
Clerk of the Court

APPENDIX C—SUPREME COURT OF THE STATE OF NEW YORK APPELLATE DIVISION SECOND JUDICIAL DEPARTMENT, DECISION AND ORDER

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND JUDICIAL DEPARTMENT
Argued - September 7, 1993

_____AD2d_____

ALBERT M. ROSENBLAT, JP.

CHARLES B. LAWRENCE

CORNELIUS J. O'Brien

JOHN COPERTINO,JJ,

---

91-09415

Robert Hudson, Appellant, v Carleton Varney, et al., respondents.

DECISION & ORDER

---

Robert Hudson, Brewster, N.Y., appellant pro se.

In an action pursuant to Real Property Actions and Proceedings Law article 15, inter alia, to establish the plaintiffs right to an easement. The

plantiff appeals from an order of the Supreme Court, Dutchess County ( Judice J.) entered July 18, 1991, which granted the defendants'motion to dismiss the complaint and denied the plaintiffs motion to restore the case to the trial calendar.

ORDERED that the order is affirmed without costs or disbursments.

The plaintiff, who is the owner of certain landlocked forestland in Dutchess County, was convicted after a 1990 jury trial of criminal trespass and criminal contempt with respect to his violation of two prior court orders, inter alta, restraining him from entering upon certain adjoining land. The adjoining land is owned by Carleton and Suzanne Varney, who with the State of NEW York, are defendants herein. One of the prior restraining orders, dated December

21, 1984, was the result of an action brought by the Varneys against the plaintiff for trespass. the Plaintiffs defense to the criminal charges was that he enjoyed an easement over their property based upon the original land grant dating from the mid-1700's. The prosecutor in the criminal action, utlizing deeds and maps of the area, successfully rebutted this defense in demonstraiting to the jury that no such easement existed. Shortly after he was convicted the plaintiff began the instant action, the goal of which is a declaration that he has an easement enabling him to cross the Varneys property, joined by the State, moving to dismiss the complaint pursuant to CPLR 3211(a)(1), (5)and (7). The Supreme Court granted the motion on all three grounds, adding that the State was neither a necessary nor proper party. We

affirm.

Contrary to the plaintiff's contentions, the Supreme Court properly held that the present action is not maintainable because of res judicata and collateral estopel (see, CPLR 3211[a][5] The plaintiff had a full opportunity to litigate [this] particular issue [and] he cannot reasonably demand a second one" (Schwartz v Public Adm'r of County of Bronx, 24NY2d 65,69). A prior determination made in a criminal action may have collateral estopel effect Vavolizza v Krieger, 33 NY2d 351; Grand Inc. v City of New York, 32 NY2d 300). In the present case the plaintiff asserts the very same right to an easement over his neighbors' land he had earlier asseted as a defense in a criminal action which issue was considered by a jury and resolved against him. Accordingly we conclude that the Supreme Court

properly dismissed the complaint against both the Varneys and the State, and denied as academic the plaintiffs motion to restore the case to the trial calendar.

We have considered the plaintiff's remaining contentions and find them to be without merit.

ROSENBLATT,JP.,LAWRENCE, O'BRIEN AND COPERTIOO,JJ.,concur

ENTER:

Martin H. Brownstein
Clerk

September27, 1993

HUDSON V VARNEY

APPENDIX—D DECISION AND ORDER OF THE SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF DUTCHESS

SUPREME COURT OF NEW YORK STATE
COUNTY OF DUTCHESS

---

ROBERT HUDSON, PLAINTIFF

-against-

CARLETON VARNEY, SUZANNE VARNEY, AND THE PEOPLE OF THE STATE OF NEW YORK,
DEFENDANTS.

---

JIUDICE,J.

This plaintiff has commenced what purports to be a proceeding pursuant to Article 15 RPAPL. He has, by seperate motion, moved for a change of venue and for an order restoring the case to the trial calendar.

The defendants, Varney, have moved for an order pursuant to CPLR 3211(a)(1), (5),and (7) dismissing the complaint. The defendant, State of New York, joins in this dismissal motion.

The real property which is the

subject matter of this litigation is located in Dutchess County and pursuant to CPLR Section 507 the proper venue of this action is Dutchess County with the result that plaintiff's motion to change venue is denied.

The plaintiff is the owner of a landlocked parcel of land in the Town of Pine Plains in Dutchess County. The plaintiff's property is contiguous to and abuts the property of the defendants, Varney, to the west.

As above noted, this property is landlocked and apparently plaintiff has no access to a public highway other than over the land of defendants and others.

It is indicated that the plaintiff entered into and upon the defendant's premises in order to gain access to his property as it abuts defendants' property to the west.

In September 1983 the plaintiff kindled a fire on his property adjoining the Varneys Property and allowed the fire to extend beyond the limits and to come onto the premises of the defendants where it destroyed a portion of the forest land.

The New York State Department of Environmental Conservation, the Pine Plains Fire Department, the Stanford Fire Department, and the Milan fire Department, while engaged in attempting to extinguish the fire, were required to bulldose and excavate through large portions of the forest lands of the defendants, Varney, in order to gain access to the fire site on the plaintiff's property.

In response to the continuing trespass by the plaintiff over the defendant property, they commenced an action in Supreme Court Dutchess County, as plaintiffs, against Hudson as Defendant.

On December 21, 1984, Honorable Ralph A. Beisner, ordered and adjudged that this plaintiff be forever enjoined and restrained from entering and trespassing on the defendants property.

Apparently this plaintiff continued to trespass on the defendants' property with the result that in August 1989 he appeared in the Pine Plains Justice Court to face charges of harassment, trespass, cutting trees on state land and driving and abandoning a motor veichele on state lands. The Pine Plains Justice found the Plaintiff guilty on all charges and ordered him to adhere to the original Supreme Court order, as aforesaid.

Once again in March 1990, this plaintiff was tried by a jury in the Town Court of Pine Plains. He had been charged with trespass, criminal trespass in the

third degree and criminal contempt in the second degree for intentionally disobeying the Supreme Court Order of December 21, 1984.

The record indicates that during the course of this trial, the plaintiff's defense was that he had an easement over the property of the defendants based upon the original Nine Partners Land Grant, which grant occured some three hundred years before.

During the course of the trial the Assistant District Attorney introduced various doccuments by way of deeds and maps which showed conclusively that no easement, road or right of way existed to the plaintiff's property , thereby rebutting his defense. There was also expert testimony which indicated no easement existed on any map or in any recorded instrument in favor of this

plaintiff.

The plaintiff was found guilty on all counts, was sentenced to three years probation, fined a some of money, and ordered to participate in certain community work. Once again the plaintiff, for the third time, was ordered to refrain from trespassing on the defendants' property.

It is indicated that the allegations set forth in this plaintiff's present complaint are identical with those adjudicated on three seperate occasions.

It is clear, therefore, from the record, the Varneys have a defense based upon documentry evidence and that the plaintiff's claim is barred by res judicata and collateral estopel since the very issues have been previously litigated and disposed of between these parties.

It is also clear from the record and from the prior decisions, as above stated, that this plaintiff's present complaint fails to state a cause of action as fraimed.

As to the State of New York, "Hicks Hill Road Rear" as referred to in the plaintiff's complaint is not a State road. Any monitary claim against the state may only be maintained in a Court of Claims, and not in State Supreme Court. Finally, any title to lands held by the State of New York in its soverign capacity cannot be acquired through adverse possession.

Therefore, not only is the State of New York not a necessary or proper party to this action, but the complaint fails to set forth any facts constituting a cause of action against the State.

Based on the foregoing, the motion by the defendants is granted and the Plaintiff's complaint is dismissed against Carleton Varney, Suzanne Varney, and the People of the State of New York.

The Plaintiff's motion for an order restoring this case to the trial calendar is denied, as moot.

This constitutes the decision and order of the Court.

Dated: July 18th ,1991

Signed- Joseph Jiudice

TO: Jack Quartararo, Atty/Defendants
9 Cannon Street, PO Box 750, Poughkeepsie 12567

FRED WILDMAN, Asst. Atty II
Department of Law, 120 Broadway, N.Y., N.Y. 10271

ROBERT HUDSON
Tonetta Lake Park, Brewster N.Y. 10271

APPENDIX E—LETTER FROM JUSTICE TENORE OF THE TOWN OF PINE PLAINS

8/24/90

Hon. George L. Tenore INDEX#90-254
Town Justice
P.O. Box 130-Pine Plains N.Y. 12507
518 308 7710

---

Appellate Term of the Supreme Court
9th & 19th Judicial Districts
111 Livingston Street
Brooklyn, N.Y. 11201

Gentlemen:

What the defendant refers to as missing records & or documents are here. In retrospect this is a bunch of papers droped off at the court soon after original arrest. Most of this material is not only irrevelent, but was never admitted as evidence at the trial(merely submitting material to the court is not enough). It is not the obligation of the

court to produce evidence, witnesses etc. for the defendant into trial. The minutes of the trial, never show that the defendant called to the stand a Mr. Carleton Varney for example.

1. The motion for dismissal was addressed before (denied)

2. Motion for change of venue was also addressed (denied)

3. Pine Plains Bldg. Inspectors letter (is in these papers) was admitted into evidence and the bldg. Insp. answers to questions presented at the trial are all part of the substance of the minutes. Copy of letter attached.

4. Defendant was notified one month in advance of the change in date of trial Copy attached. This was addressed before

5. Missing were subpoenas(2) served on a Carleton Varney. Mr Varney served twice with supboenas, and I have no way of

knowing wether or not he appeared in court, as he was never called to the stand by the defendant, defending his own case(please note: I would not know Mr Varney if I saw him)

AS FOR THE REST OF THE SO CALLED "MISSING PAPERS AND DOCUMENTS" DEFENDANTS COPIES ATTACHED: These papers proved only that he owned his land and were not jermane to the issues (charges) on trial for. No one ever questioned his ownership. The jury had no trouble as finders of fact that the defendant not only trespassed but violated a superior court order when doing so.

signed

Hon. G.L. TENORE

RE: The letter dated 8/24/90 from Justice George L. Tenore to the Appellate Term Court of N.Y.S. 9th Judicial District this letter directed that

Defendant Hudsons deeds and little Nine Partners Patent mapping and deed and other doccuments were not germane to the charge of trespass, criminal trespass or criminal contempt of the previous N.Y.S. Supreme Court order. No question of Defendant Hudsons title was ever determined by this court. Letter attached

Signed

Hon. George L. Tenore
Town Justice
Pine Plains
P.O. BOX136
Pine Plains N.Y.12567

APPENDIX—F Real Property Actions AND PROCEEDINGS LAW ARTICLE 15 ACTION TO COMPEL THE DETERMINATION OF A CLAIM TO REAL PROPERTY

# REAL PROPERTY ACTIONS AND PROCEEDINGS LAW

## Laws 1962, Chapter 142

As amended generally by L.1962, c. 312 and to July 19, 1979

Effective September 1, 1963

AN ACT to reconsolidate laws relating to actions, rights of action and proceedings concerning real property, constituting chapter eighty-one of the consolidated laws

Became a law March 13, 1962, with the approval of the Governor. Passed, three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

## CHAPTER 81 OF THE CONSOLIDATED LAWS

Article Sec.

* * *

15. Action to Compel the Determination of a Claim to Real Property ....1501

## ARTICLE 15—ACTION TO COMPEL THE DETERMINATION OF A CLAIM TO REAL PROPERTY

Sec.

1501. Who may maintain an action.
1503. Action to determine claims where foreclosure of mortgage was void or voidable.
[1505. Repealed.]
1511. Additional parties.

1513. Guardians ad litem.
1515. Complaint.
1517. Answer.
1519. Proceedings.
1521. Judgment.
1522. Accounting in certain cases.
1523. Judgment of foreclosure in certain cases.
1531. Effect of judgment.
1541. Article applies to corporations and to the people of the state of New York.
1551. Effect of article.

## § 1501. Who may maintain an action

1. Where a person claims an estate or interest in real property; or where he claims such estate or interest as executor or administrator of a deceased person; or where a municipal corporation has purchased an estate or interest in real property at a sale conducted by it for unpaid taxes against the property and the time within which redemption from such sale may be made has expired and such municipal corporation claims it; such person or municipal corporation, as the case may be, may maintain an action against any other person, known or unknown, including one under disability as hereinafter specified, to compel the determination of any claim adverse to that of the plaintiff which the defendant makes, or which it appears from the public records, or from the allegations of the complaint, the defendant might make; provided, however, that where the estate or interest claimed by the plaintiff is for a term of years, the action may not be maintained unless the balance remaining of such term of years is not less than five.

2. Such action may be maintained, even though the defendant's claim appears to be invalid on its face, or the court may have to determine the death of a person, or any statutory limitation of time, or any other question of fact or law upon which an adjudication of the adverse claims of the parties may depend.

3. An action against a woman who claims a right of dower in the whole or a part of the property cannot be commenced until the expiration of four months after the death of defendant's husband.

4. Where the period allowed by the applicable statute of limi-

tation for the commencement of an action to foreclose a mortgage, or to enforce a vendor's lien, has expired, any person having an estate or interest in the real property subject to such encumbrance may maintain an action against any other person or persons, known or unknown, including one under disability as hereinafter specified, to secure the cancellation and discharge of record of such encumbrance, and to adjudge the estate or interest of the plaintiff in such real property to be free therefrom; provided, however, that no such action shall be maintainable in any case where the mortgagee, holder of the vendor's lien, or the successor of either of them shall be in possession of the affected real property at the time of the commencement of the action. In any action brought under this section it shall be immaterial whether the debt upon which the mortgage or lien was based has, or has not, been paid; and also whether the mortgage in question was, or was not, given to secure a part of the purchase price.

5. The interest had by any mortgagee or contract vendee of real property or by any successor in interest of either of them, is an "interest in real property" as that phrase is used in this article of the real property actions and proceedings law.

**§ 1503. Action to determine claims where foreclosure of mortgage was void or voidable**

When real property has been sold pursuant to a judgment in an action to foreclose a mortgage under article 13 of this chapter or pursuant to article 14 of this chapter, or has been conveyed to the mortgagee or the designee of such mortgagee by deed in lieu of foreclosure, and it appears from the public records or from the allegations of the complaint that such judgment, sale or conveyance was or may have been, for any reason, void or voidable as against any person, including an owner of the real property mortgaged, the purchaser or such mortgagee or designee, or the successor of any such person, in possession of such real property, may maintain an action as provided in this article to determine the right of any person to set aside such judgment, sale or conveyance or to enforce an equity of redemption or to recover possession of the property, or the right of any junior mortgagee to foreclose a mortgage. Such action may be maintained even though an action against the defendant to foreclose the mortgage under which the judgment, sale or conveyance was made, or to extinguish a right of redemption, would be barred by the statutes of limitation.

## § 1505. Repealed. L.1971, c. 689. § 2, eff. June 22, 1971

## § 1511. Additional parties

1. In an action brought under this article, the person in possession shall be made a party to the action, and when such person claims the right of possession, or an interest in the real property, under another, such other person shall also be made a party.

2. Where it appears to the court that a person not a party to the action may have an estate or interest in the real property which may in any manner be affected by the judgment, the court, upon application of such person, or of any party to the action, or on its own motion, may direct that such person be made a party.

## § 1513. Guardians ad litem

If it shall appear by the complaint or is otherwise made to appear to the court at any time before a final judgment, that a defendant is or might be an infant, or incompetent to manage himself or his affairs, or that a future interest in the affected real property has been so limited that as yet there are neither certain nor presumptive owners thereof in being or ascertained, such court shall appoint a guardian ad litem who shall represent and protect such infant or incompetent, or the possible interests of the person or persons who eventually may become entitled to such real property or to an interest therein under such limitation, and in case of the death or failure or inability of such guardian to act, a successor, who shall appear for such infant or incompetent or for such possible interests until the termination of such action.

## § 1515. Complaint

1. The complaint must state that the action is brought pursuant to this article and must set forth facts showing:

a. The plaintiff's estate or interest in the real property, the particular nature of such estate or interest, and the source from or means by which the plaintiff's estate or interest immediately accrued to him; and if his estate or interest therein is for a term of years, that the balance remaining of such term of years is not less than five.

b. That the defendant claims, or that it appears from the public records or from the allegations of the complaint, that the defendant might claim an estate or interest in the real property, adverse to that of the plaintiff, and the particular nature of such estate or interest. Where the people of the state of New York are made a party defendant, as provided in this article, the summons and complaint must be served upon the attorney-general who must appear in behalf of the people, and the complaint shall set forth detailed facts showing the particular nature of the estate or interest and the reason for making the people a party defendant. Upon failure to state such facts, the complaint shall be dismissed as to the people of the state of New York.

c. Whether any defendant is known or unknown, and whether any defendant is or might be an infant, mentally retarded, mentally ill or an alcohol abuser.

d. Whether the judgment will or might affect a person or persons not in being or ascertained at the commencement of the action, who by any contingency contained in a devise or grant or otherwise, could afterward become entitled to a beneficial estate or interest in the property involved; and whether every person in being who would have been entitled to such estate or interest if such event had happened immediately before the commencement of the action is named as a party thereto.

2. The complaint must describe the property claimed with common certainty, by setting forth the name of the township or tract and the number of the lot, if there is any, or in some other appropriate manner, so that from the description possession of the property claimed may be delivered where the plaintiff is entitled thereto, and may contain an allegation that no personal claim is made against any defendant other than a defendant who shall assert a claim adverse to the claim of the plaintiff set forth in the complaint. The demand for judgment may be to the effect that the defendant and every person claiming under him be barred from all claim to an estate or interest in the property described in the complaint, or that possession be awarded the plaintiff, or it may combine two or more of said demands with other demand for appropriate relief.

3. In an action brought as specified in subdivision 3 of section 1501, if the complaint admits the defendant's right of dower in the property described therein, or in any part thereof, it must demand judgment that her dower be admeasured.

## § 1517. Answer

The defendant may, in his answer, deny any material allegation of the complaint controverted by him, or any knowledge or information thereof sufficient to form a belief, or may set forth facts constituting a defense; and thereupon he may demand judgment dismissing the complaint. He may also set forth facts as a counterclaim for the same cause of action; or the defendant may set forth facts showing that he has an estate or interest in said property; and thereupon he may demand any judgment to which he would be entitled in an action brought by him to recover that estate or to enforce in any manner the interest which he asserts in such property; or he may combine any two or more of said demands.

## § 1519. Proceedings

1. In an action maintained under this article, the proceedings shall be governed by the provisions regulating civil actions, except as otherwise provided in this article.

2. When service of the summons on any defendant is made by publication, the order for such service shall direct that any papers required by such order to be mailed to such defendant shall be sent by registered mail, and when such mailing is required shall also direct that an affidavit, by or on behalf of the plaintiff, be filed stating that such papers were mailed as required by such order.

3. Whenever a claim of right to immediate possession is in issue, the person in possession shall be presumed to have the right to such possession, but such presumption may be rebutted.

4. Where any party claims the real property in question, or any part thereof, by virtue of an estate in reversion or in remainder, whether vested or contingent, and the verdict, report, or decision finds that he has such an estate, it must specify the time when, or the contingency upon which, he will be entitled to possession.

5. Where the complaint demands, as provided in subdivision 3 of section 1515 of this article, that the defendant's dower be admeasured, and the defendant does not, by her answer, set forth facts showing that she is entitled to a greater right of dower, or another estate or interest in the property, than that admitted by the plaintiff, and demand judgment therefor, as if

she were the plaintiff in an action for dower, the court must render an interlocutory judgment, directing her dower to be admeasured, with or without damages for its detention, as in an action for dower. The subsequent proceedings shall be the same, as if the defendant had, as plaintiff, recovered an interlocutory judgment in an action for dower.

## § 1521. Judgment

1. Final judgment in the action shall declare the validity of any claim to any estate or interest established by any party to the action. The judgment shall also declare that any party whose claim to an estate or interest in the property has been adjudged invalid, and every person claiming under him, by title accruing after the filing of the judgment-roll, or of the notice of the pendency of the action, as prescribed by law, be forever barred from asserting such claim to an estate or interest the invalidity of which is established in the action, and may direct that any instrument purporting to create any such estate or interest be delivered up or cancelled of record or be reformed of record as the facts may require. Judgment may also be given awarding possession of real property to any party together with his damages for the withholding of such property and two or more of such forms of judgment may be awarded in the same action.

2. If one of the parties to the action is the people of the state and the judgment adversely affects the title, interest or claim of the people of the state based upon a tax deed, the judgment shall also provide in effect as follows:

a. That the people of the state of New York shall have a lien upon such real property or part thereof described in such tax deed, prior and superior to all other liens, (1) for the amount of the unpaid taxes not adjudged illegal in such action for which such real property was sold or liable to be sold in the first instance and for which such tax deed was issued, together with fees, charges and interest; (2) for the amount of the unpaid taxes not adjudged illegal in such action for which such real property was subsequently sold or liable to be sold, together with fees, charges and interest; (3) for the amount of all taxes, fees and charges admitted or paid by the people upon such real property to the date of the entry of such judgment, together with interest thereon from the date of such admission or payment. In

the determination of the amount of such lien, establishment of payments of taxes on said land by the adjudged or admitted owner of the property during any of the same years in which payments were also made by the people of the state of New York shall reduce the lien of the people by the larger of the two tax payments for each of the years affected by duplicate payments, and in the event that wholly identical areas are not affected by the duplicate payments the court shall have power to apportion and adjust the amount of the lien as equity may require;

b. That the people of the state of New York may foreclose such lien as a mortgage on real property is foreclosed, provided such lien remains unpaid after the expiration of one year from the entry of such judgment.

The remedy provided by this subdivision for recovery of tax payments shall be in addition to any other remedy now or hereafter available in law or in equity.

3. If a judgment described in subdivision 1 or subdivision 2 is taken upon the defendant's default in appearing or pleading, it shall not award costs to either party, unless it be taken upon a default in answering after the decision of a motion addressed to the complaint. A defendant against whom no personal claim is made in the complaint shall not be entitled to costs unless awarded by the court when such defendant asserts in his answer and establishes a claim in said lands adverse to the claim of the plaintiff in said action.

4. Where a verdict, report, or decision is rendered, as prescribed by subdivision 4 of section 1519, final judgment to that effect must be rendered accordingly, without damages. In such a case, an execution for the delivery of the possession of the property may be issued upon the judgment; but only by the special order of the court, made upon an application by the defendant, or a person claiming under him, and upon satisfactory proof that the time has arrived when, or the contingency has happened upon which, the applicant is entitled to possession by the terms of the judgment.

5. Where the judgment directs that an instrument be delivered up, cancelled or reformed of record, or that real property be conveyed, if the direction is disobeyed, the court, by order, besides punishing the disobedience as a contempt, may require the sheriff to take, and deposit or deliver, the instrument or to con-

vey the real property, or to perform the required acts in conformity with the direction of the court.

## § 1522. Accounting in certain cases

In an action brought under section 1503 the court shall direct such accounting as justice requires in the circumstances for rents and profits of the property or the value of the use and occupation during the period subsequent to the original sale or conveyance in lieu of foreclosure during which possession of the property was held by the plaintiff or by any other party to the action.

## § 1523. Judgment of foreclosure in certain cases

1. In an action under section 1503 if it shall appear to the court that there was a defect in the original foreclosure proceedings and such defect was not occasioned by the fraud or wilful neglect of the plaintiff, the judgment may foreclose or reforeclose the mortgage pursuant to article 13 of this chapter, notwithstanding that an action to foreclose the mortgage would otherwise be barred; provided, however, that no recovery shall be granted for any residue of the debt, remaining unsatisfied, if an action to foreclose the mortgage would otherwise be barred.

2. If it shall appear to the court in any such action that the defect in the foreclosure proceedings was not due to fraud or wilful neglect of the plaintiff and that the defendant or the person under whom he claims was not actually prejudiced thereby, the judgment may fix a time for redemption of the property and provide that a failure to redeem within such time shall thereafter preclude the defendant from redeeming the property or claiming any right, title or interest therein.

3. If a redemption of the property is ordered, the court must direct that the value of any improvement to the property made subsequent to the original sale or conveyance in lieu of foreclosure shall be added in computing the amount necessary to redeem the premises, in the same manner as if the value of such improvements was a portion of the mortgage debt.

4. If a new sale of the premises is ordered, the court may include in the judgment a provision awarding to the plaintiff the value of any improvements to the property made subsequent to the original sale or conveyance in lieu of foreclosure, in the same manner as if the value of such improvements was a portion of the mortgage debt.

[1] So in original. A comma probably should be inserted.
[2] Sept. 1, 1963.

5. The relief provided for in subdivision two of this section shall not be granted unless

a. the mortgage was executed after September 1, 1951, or

b. the defendant whose right [1] title or interest will be extinguished by failure to redeem the property within the time fixed by the judgment held such right to redeem only by virtue of a subordinate mortgage or other lien, and an action to foreclose such right of redemption would not be barred at the time this act shall take effect.

The relief provided for in subdivision four of this section shall not be granted unless the improvements were made after September 1, 1951, except to the extent that a recovery, allowance or credit for or on account of the value of any improvements, including improvements made prior to the effective date of this act,[2] might be granted, in any other action or proceeding, to the person maintaining the action provided for in section 1503.

## § 1531. Effect of judgment

1. A final judgment in favor of either party, in an action brought as prescribed in this article, is conclusive, as to the title established in the action, against the other party, known or unknown, including an infant, a mentally retarded person, a mentally ill person, or an alcohol abuser, and also against every person claiming from, through or under that party, by title accruing after the filing of the judgment roll, or of the notice of the pendency of the action, as prescribed by law; also against each person not in being or ascertained at the commencement of the action, who by any contingency contained in a devise or grant or otherwise, could afterward become entitled to a beneficial estate or interest in the property involved, provided that every person in being who would have been entitled to such estate or interest if such event had happened immediately before the commencement of the action is a party thereto, or that a guardian ad litem is appointed, as prescribed by section 1513.

2. A new trial of said action after judgment shall not be granted as a matter of right, but the court may, in its discretion in the interest of justice, grant a new trial upon an application made by any party within one year after said judgment. Upon any new trial of an action brought as prescribed in this article, the record of the evidence given upon the previous trial may be again offered to the court by either party, and may be received

in evidence, in case the same evidence cannot be again procured. The courts may make such rules and orders as to preserving the record of the evidence given in such actions and perpetuating the proofs produced therein, either with or without the awarding of any other relief to the party whose proofs are so perpetuated, as shall be necessary or proper, and may embrace such directions in the judgment.

### § 1541. Article applies to corporations and to the people of the state of New York

An action may be maintained, as prescribed in this article, by or against a corporation, or by or against an unincorporated association, as if it were a natural person, or such an action may be maintained by or against the receiver or other successor of any such corporation or association, or by or against the people of the state of New York, and the use of the masculine gender or of the term person in this article includes the people of the state of New York.

### § 1551. Effect of article

Nothing contained in this article shall be construed to limit any other remedy in law or equity.

State of New York
DEPARTMENT OF THE STATE

I have compared the preceding copy of Article 15 of Real Property Actions and Proceedinds Law as contained in Chapter 142 of the Laws of 1962 as amended to date with the original law on file in this office, and do

hereby certify that the same is a correct transcript therefrom and of the whole thereof,

Given under my hand and the official seal of the Department of State, at the City of Albany,this this sixteenth day of March, 1992.

GAIL S. SHAFFER
SECRETARY OF STATE

SIGNED-PHILLIP M. SPARKS
SPECIAL DEPUTY SECRETARY OF STATE

APPENDIX—G REAL PROPERTY ACTIONS AND PROCEEDINGS LAW-ARTICLE 15 ADVERSE POSSESSION

# REAL PROPERTY ACTIONS AND PROCEEDINGS LAW

## Laws 1962, Chapter 142

As amended generally by L.1962, c. 312 and to July 19, 1979
Effective September 1, 1963

AN ACT to reconsolidate laws relating to actions, rights of action and proceedings concerning real property, constituting chapter eighty-one of the consolidated laws

Became a law March 13, 1962, with the approval of the Governor. Passed, three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

## CHAPTER 81 OF THE CONSOLIDATED LAWS

Article Sec.

* * *

5. Adverse Possession ..... 501

## ARTICLE 5—ADVERSE POSSESSION

Sec.

501. Action after entry.
511. Adverse possession under written instrument or judgment.
512. Essentials of adverse possession under written instrument or judgment.

521. Adverse possession under claim of title not written.
522. Essentials of adverse possession under claim of title not written.
531. Adverse possession, how affected by relation of landlord and tenant.
541. Adverse possession, how affected by relation of tenants in common.
551. Right of person to possession not affected by descent cast.

## § 501. Action after entry

An entry upon real property is not sufficient or valid as a claim unless an action is commenced thereupon within one year after the making thereof and within ten years after the time when the right to make it descended or accrued.

## § 511. Adverse possession under written instrument or judgment

Where the occupant or those under whom he claims entered into the possession of the premises under claim of title, exclusive of any other right, founding the claim upon a written instrument, as being a conveyance of the premises in question, or upon the decree or judgment of a competent court, and there has been a continued occupation and possession of the premises included in the instrument, decree or judgment, or of some part thereof, for ten years, under the same claim, the premises so included are deemed to have been held adversely; except that when they consist of a tract divided into lots, the possession of one lot is not deemed a possession of any other lot.

## § 512. Essentials of adverse possession under written instrument or judgment

For the purpose of constituting an adverse possession by a person claiming a title founded upon a written instrument or a judgment or decree, land is deemed to have been possessed and occupied in either of the following cases:

1. Where it has been usually cultivated or improved.

2. Where it has been protected by a substantial inclosure.

3. Where, although not inclosed, it has been used for the supply of fuel or of fencing timber, either for the purposes of husbandry or for the ordinary use of the occupant.

Where a known farm or a single lot has been partly improved, the portion of the farm or lot that has been left not cleared or not inclosed, according to the usual course and custom of the adjoining country, is deemed to have been occupied for the same length of time as the part improved and cultivated.

## § 521. Adverse possession under claim of title not written

Where there has been an actual continued occupation of premises under a claim of title, exclusive of any other right, but not founded upon a written instrument or a judgment or decree, the premises so actually occupied, and no others, are deemed to have been held adversely.

## § 522. Essentials of adverse possession under claim of title not written

For the purpose of constituting an adverse possession by a person claiming title not founded upon a written instrument or a judgment or decree, land is deemed to have been possessed and occupied in either of the following cases, and no others:

1. Where it has been usually cultivated or improved.

2. Where it has been protected by a substantial inclosure.

## § 531. Adverse possession, how affected by relation of landlord and tenant

Where the relation of landlord and tenant has existed between any persons the possession of the tenant is deemed the possession of the landlord until the expiration of ten years after the termination of the tenancy; or, where there has been no written lease, until the expiration of ten years after the last payment of rent; notwithstanding that the tenant has acquired another title

or has claimed to hold adversely to his landlord. But this presumption shall cease after the periods prescribed in this section and such tenant may then commence to hold adversely to his landlord.

### § 541. Adverse possession, how affected by relation of tenants in common

Where the relation of tenants in common has existed between any persons, the occupancy of one tenant, personally or by his servant or by his tenant, is deemed to have been the possession of the other, notwithstanding that the tenant so occupying the premises has acquired another title or has claimed to hold adversely to the other. But this presumption shall cease after the expiration of ten years of continuous exclusive occupancy by such tenant, personally or by his servant or by his tenant, or immediately upon an ouster by one tenant of the other and such occupying tenant may then commence to hold adversely to his cotenant.

**§ 551. Right of person to possession not affected by descent cast**

The right of a person to the possession of real property is not impaired or affected by a descent being cast in consequence of the death of a person in possession of the property.

State of New York
DEPARTMENT OF STATE ) ss:

I have compared the preceding copy of Article 5 of the Real Property Actions and Proceedings Law as contained in Chapter 142 of the Laws of 1962 and as amended to April 11, 1994. with the original law on file in this office, and do hereby certify that the same is a correct transcript therefrom and of the whole thereof.

Given under my hand and the official seal of the Department of State, at the City of Albany, this twelfth day of April, 1994.

GAIL S. SHAFFER
Secretary of STATE

signed- Philip M. Sparks

Special Deputy Secretary of State

APPENDIX—H THE CONSTITUTION OF THE STATE OF NEW YORK ARTICLE 1. Section 14. [Common law and acts of the state legislatures]

CONSTITUTION

OF THE

STATE OF NEW YORK

As Amended to March 13, 1992

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Article
1. Bill of Rights

ARTICLE I--BILL OF RIGHTS

Sec.

14. Common law and acts of the state legislatures.

§14. [Common law and acts of the state legislatures]

Such parts of the common law, and of the acts of the legislature of the colony of New York, as together did form the law of the said colony, on the nineteenth day of

April, one thousand seven hundred seventy-five, and the resolutions of the congress of the said colony, and of the convention of the State of New York, in force on the twentieth day of April, one thousand seven hundred seventy-seven, which have not since expired, or been repealed or altered; and such acts of the legislature of this state as are now in force, shall be and continue the law of this state, subject to such alterations as the legislature shall make concerning the same. But all such parts of the common law, and such of the said acts, or parts thereof, as are repugnant to this constitution, are hereby abrogated.

NEW YORK STATE DEPARTMENT OF STATE -ss.

I have compared the preceeding copy of Section 14 of Article 1 of the Constitution of New York State as amended to March13,1992 with the original law on file in this

office, and do hereby certify that the same is a correct transcript therefrom and of the hole thereof.

Given under my hand and the official seal of the Department of State, at the City of Albany, this sixteenth day of March, 1992.

GALE S. SAFFER
Secretary of State
signed-PHILLIP M. SPARKES
Special Deputy Secretary of State

*APPENDIX—I The CONSTITUTION OF THE* UNITED STATES - BILL OF RIGHTS ARTICLE FOURTEEN

THE CONSTITUTION OF THE UNITED STATES

BILL OF RIGHTS

ARTICLE FOURTEEN

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States

according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of elctors for President and Vice-President of the United States, Representatives in Congress, the executive or judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one

years of age in such State.

Section 3. No person shall be a senator or representative in Congress, or elector of President or Vice-President, or hold any office, civil or military, under the United States, or under any State, who having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Consitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two thirds of each house, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts

incurred for payment of pensions and bounties for services suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss of emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

ARTICLE XIV IN ADDITION TO AND AMENDMENT OF, THE CONSITUTION OF THE UNITED STATES OF AMERICA PROPOSED BY CONGRESS JUNE 6, 1866 AND RATIFIED BY THE LEGISLATURES OF [OR CON VENTIONS IN] THE SEVERAL STATES PURSUANT TO THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION JULY 28, 1868.